

NEW YORK CITY
OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS
ENVIRONMENTAL CONTROL BOARD

BOARD MEETING

Training Room 143, 12th Floor
100 Church Street, New York, New York

November 17, 2016

9:16 A.M. to 9:41 A.M.

November 17, 2016

MEMBERS PRESENT:

Ernest J. Cavallo - Citizen Member
Michele Defreitas-Withim, Esq. - Dept. of Health &
Mental Hygiene
Fidel F. Del Valle, Esq. - Chair, OATH
Shamonda Graham - Department of Buildings
Joseph Gregory, Esq. - Fire Department
Elizabeth Knauer - Citizen Member
Madelynn Liguori, Esq. - Department of Sanitation
Jose Marquez - Fire Department
Russell Pecunies, Esq. - Dept. of Environmental Protection
Thomas Shpetner - Citizen Member
Matthew Smith - Police Department
Douglas S. Swann - Citizen Member

ALSO PRESENT:

Rachel Amar - Special Assistant to Commissioner
Vanessa Caughman - Computer Service Technician, OATH
Kelly Corso, Esq. - Assist. Director of Adjudications, ECB
David Goldin, Esq. - Administrative Justice Coordinator,
Mayor's Office
Diana Haines, Esq. - Assistant General Counsel, OATH/GC
Johnathan Jacobs - Business Integrity Commission
Susan Kassapain - Assistant Commissioner,
Vehicle for Hire Hearings Division
Mark H. Leeds, Esq. - Special Counsel, OATH
Joanne Rattansingh, Esq. - Managing Attorney
Tynia Richards - Deputy Commissioner, General Counsel,
OATH
Simone Salloum - Counsel to the Board, OATH
Peter Schulman, Esq. - Deputy Supervising Attorney,
Appeals, OATH/ECB
Frances Shine - Secretary to the Board, OATH
Amy Slifka, Esq. - Deputy Commissioner/Executive Director,
OATH/ECB
Thomas Southwick, Esq. - Supervising Attorney, Appeals,
OATH

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2 (The Board Meeting commenced at 9:16
3 A.M.)

4 MR. FIDEL F. DEL VALLE, ESQ.,
5 CHAIRPERSON, COMMISSIONER & CHIEF ADMINISTRATIVE
6 LAW JUDGE, OATH: Good morning everyone.

7 ALL: Good morning.

8 MR. DEL VALLE: We may have some guests
9 from the People's Democratic Republic of China
10 coming in later on to observe, take notes and
11 collect our names, I don't know. So if you see
12 some folks coming in, it's about six or seven of
13 them, that's what that's all about. They're from
14 Yale University. They're in a program at Yale.
15 Some of them were here last week doing basically
16 the same thing.

17 Anyway, is there a motion to accept the
18 minutes of the last meeting? It's unanimous.

19 MR. JOSE MARQUEZ, FIRE DEPARTMENT: I
20 abstain.

21 MR. DEL VALLE: With one abstention.

22 MS. MICHELE DEFREITAS-WITHIM, ESQ.,
23 DEPARTMENT OF HEALTH & MENTAL HYGIENE: Abstain.

24 MR. DEL VALLE: And the Fire Department

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2 is abstaining. And the Health Department is
3 abstaining. So otherwise it's accepted, unless
4 anybody's got any questions or issues with it.

5 I'll ask DEP to do their thing,
6 requesting cease and desist orders.

7 MR. RUSSELL PECUNIES, ESQ., DEPARTMENT
8 OF ENVIRONMENTAL PROTECTION: Okay. Good morning.
9 I am Russell Pecunies, Assistant Counsel with the
10 Department of Environmental Protection. This
11 month DEP is requesting that the Board issue one
12 cease and desist order under the noise code. This
13 is for Blick Art Materials LLC, which is located
14 at 1 Bond Street. The HVAC unit at that location
15 has been cited on three occasions, most recently
16 at the end of September, for excessive noise. And
17 based on the repeated violations and continuing
18 failure to come into compliance, DEP is asking
19 that the board issue an order to cease and
20 desist.

21 MR. DEL VALLE: Any questions? Motion?
22 It's unanimous with one abstention.

23 MR. PECUNIES: Mm-hmm, thank you. And
24 then DEP is also requesting that the Board issue

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2 21 cease and desist orders to building owners,
3 relating to failure to install backflow
4 prevention devices. In each of these cases, the
5 building owner has been issued a Commissioner's
6 Order and a summons. They've been adjudicated in
7 violation with regard to the summons and they
8 have still not complied by installing the
9 required devices. So in each of these cases, the
10 Department is asking the Board to issue an order
11 to cease and desist.

12 MR. DEL VALLE: Any questions? When did
13 the law on backflow preventers come into effect?

14 MR. PECUNIES: It has actually been
15 around -- the law says that it's -- the State law
16 says that the local water supplier is responsible
17 for ensuring that this get done. That law has
18 been around for a long time. We actually started
19 to enforce it about I would say 15 years ago,
20 maybe a little less; somewhere between ten to 15
21 years ago.

22 MR. DEL VALLE: Okay. So it shouldn't go
23 into a shocker -- to shock anybody.

24 MR. PECUNIES: And we've got a long way

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2 to go before everybody who needs one has one, so.

3 MR. DEL VALLE: Is there a motion? It's
4 unanimous -- two exemptions.

5 MR. PECUNIES: Thank you.

6 MR. DEL VALLE: That was short and
7 sweet. Pre-sealing reports, Kelly Corso.

8 MS. KELLY CORSO, ESQ., ASSISTANT
9 DIRECTOR OF ADJUDICATIONS, OATH: Good morning.
10 I'm Kelly Corso. I am Assistant Director for
11 Adjudications for OATH Hearings Division. We have
12 seven pre-sealing reports today and one post-
13 sealing report. For the pre-sealing reports, they
14 all involve backflow violations. And in all the
15 cases the hearing officers recommend that there
16 be no sealing or other action. For six of those
17 cases, the hearing officers' recommendations are
18 based on the evidence of compliance of the
19 respondents presented at the hearings. In one of
20 the cases, the seventh case, the hearing officer
21 recommended no sealing or other action based on a
22 report that DEP presented at the hearing of a re-
23 inspection of the premises indicating that the
24 backflow device we no longer necessary.

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2 Now, the post-sealing case involves a
3 noise code violation. And the respondent in that
4 case is Lucky Seven Restaurant and Bar LLC. That
5 restaurant and bar is located at 1447 St.
6 Nicholas Street in Manhattan. This case started
7 back in April of 2014 when DEP issued a summons
8 to the respondent for a violation of the noise
9 code with respect to its sound reproduction
10 equipment that was located in the restaurant and
11 bar. The sound reproduction equipment was
12 exceeding the permitted levels of noise in a
13 complainant's apartment that was located above
14 the restaurant and bar.

15 The respondent did appear for the first
16 hearing in August of 2014 and was found in
17 violation and was ordered to comply with the
18 noise code. They did not comply with the noise
19 code and they were subsequently issued three more
20 summonses. A re-inspection by DEP in June of 2016
21 showed the respondent still had not complied with
22 the noise code. And in July of 2016 the Board
23 approved a cease and desist order for the case.
24 The order had required the respondent appear at a

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2 special hearing in August of 2016 and the
3 respondent failed to appear. Respondent
4 rescheduled a hearing for September and again
5 they failed to appear. And as a result of that,
6 DEP sealed the equipment.

7 After the equipment was sealed, the
8 respondent appeared for a post-sealing hearing --
9 a number of post-sealing hearings. There was one
10 in September, October and November. At the
11 November hearing, DEP submitted an inspection
12 report showing that the respondent had installed
13 a limiter on its sound reproduction equipment and
14 that noise readings that were taken from the
15 complainant's apartment were now within the
16 decibel range required by the noise code. So the
17 hearing officer in this case has agreed with
18 DEP's recommendation that the equipment remain
19 unsealed if DEP's re-inspection and subsequent
20 re-inspection for a period of 180 days show no
21 violation.

22 MR. DEL VALLE: Motion? Unanimous with
23 one inspection. And I'm sure their neighbors are
24 very happy.

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2 MS. CORSO: I'm sure.

3 MR. DEL VALLE: You made it fast. Is
4 there a motion to go into executive session for
5 additional review? Granted.

6 [OFF THE RECORD]

7 [ON THE RECORD]

8 MR. DEL VALLE: Before we wrap up, I
9 just want to give a little bit of update of
10 thrills and chills. As everyone knows I think, we
11 are in the middle so far of a two-year
12 reorganization of an administrative adjudication
13 agreement in the City. And part of that process
14 involves shifting a lot of legacy things that
15 were brought over from other agencies: probably
16 the Health Department or the Taxi Limousine
17 Commission or DEP and a whole bunch of other
18 stuff. And one of those items involves legacy
19 rules that are more appropriately in Buildings
20 Department, Sanitation Department and so forth.

21 The original target from the First
22 Deputy Mayor was to have that completed by 2017.
23 And earlier this month we noticed that there's
24 two months left till 2017. So, various agencies

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2 will be getting a goose from us about that stuff
3 in the coming couple of months before they get a
4 goose from a higher authority as it were. That's
5 just FYI.

6 Other than that, the consolidation of
7 the Hearings Division is moving along very well.
8 At this current stage, we are getting new space
9 in the Bronx. The current space is too small. And
10 it was determined that with the Criminal Justice
11 Reform Act coming online in June of next year,
12 it's going to be way too small. So, we are
13 starting negotiations with a space in a building
14 in the -- right in the middle of the court
15 complex up on 161st Street, which I think is
16 really neat. The other option was the old Central
17 Post Office in the Bronx, which would have been
18 really, really impressive but not very practical
19 unfortunately because we can't destroy any of the
20 landmark WPA murals that are there, which would
21 be I think a mortal sin if that were done.

22 So that's going very well. And we're
23 getting more space likewise in Queens because
24 we're consolidating all our Queens operations at

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2 the Falchi building in Long Island City. The
3 facility in Jamaica, which we share with the DOF
4 -- Department of Finance, is getting too tight.
5 So, we're getting another floor in the Falchi
6 building, which should be completed about this
7 time next year for us to start moving cases in
8 there.

9 And along those lines, we're starting to
10 circulate personnel from venue to venue, to do
11 cross-pollination of good practices and making
12 sure that hearing officers can do whatever cases
13 come before them. The only complication so far
14 has been scheduling and in particular certain
15 types of summonses; one of the issues that is
16 important to the Administration is that
17 individuals be able to deal with whatever summons
18 they got from whatever agency at any location
19 basically at any time.

20 That's easier said than done when in
21 particular types of violations you need the
22 enforcement agent present for the hearing.
23 Actually the vast majority of summonses we deal
24 with don't require the enforcement agent to be

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2 present. But there are certain ones that require
3 the enforcement agent to be present and that
4 involves creating a complicated matrix for
5 scheduling those types of things.

6 One of the things that is very Buck
7 Rogers'y that is coming down the pike is the
8 mechanism for teleconferencing hearings; not only
9 for the benefit of a respondent but for the
10 benefit of enforcement agencies. We've been doing
11 this for several months already with the Port
12 Authority police and it seems to work great. But
13 again it's a technology thing that has to be
14 flushed through and budgeted and no one be
15 traumatized over it too much, which they're
16 already traumatized by the Criminal Justice
17 Reform Act stuff.

18 Any questions? Yeah?

19 MR. PECUNIES: Yeah. The new locations
20 in the Bronx and Queens will mean that the
21 existing locations will be closing or they're in
22 addition to the existing locations?

23 MR. DEL VALLE: Existing locations will
24 be closing.

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2 MR. PECUNIES: Okay. And the timeframe
3 for that tentatively on both of them is about a
4 year from now?

5 MR. DEL VALLE: Yeah. Yeah. In Staten
6 Island location, which we're getting a new
7 location there anyway, which was started long
8 before the Criminal Justice Reform Act stuff,
9 hasn't been settled exactly where it's going to
10 be; although it looks like a particular location
11 is being focused on. And the Staten Island reason
12 is mostly because the building is decrepit, to
13 put it politely. I mean, I don't --

14 MR. PECUNIES: Will that still be in the
15 vicinity of the ferry terminal or --

16 MR. DEL VALLE: I think it's within
17 range of it, yeah. We don't want to -- I don't
18 want to say that too much because the Buildings
19 Department might run over there and condemn it.
20 Is there a motion to adjourn? We are adjourned.

21 (The Board Meeting concluded at
22 approximately 9:41 A.M.)

23
24

CERTIFICATE OF ACCURACY

I, Lea Simmons, certify that the foregoing transcript of Environmental Control Board on November 17, 2016 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

Certified By



Date: November 18, 2016

GENEVAWORLDWIDE, INC

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